

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1137 OF 2004

Shrinivas Ramchandra Ankaram & anr. ... Appellants.

Versus.

Sidramappa Bhimashankar Karanje.

... Respondent.

Shri G.S.Godbole for the Appellants.

Shri Surel Shah for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 9th February, 2005.

P.C.:

1. Heard the learned Counsel appearing for the parties.

2. The Appeal is by the original Defendants Nos.1(A) and 1(B). Admittedly the Appellants are the tenants of the Respondent in respect of a premises on the ground floor. The dispute in the present Appeal is regarding the premises on the first floor. The case of the Respondent is that the Appellants' father was in permissive possession of the first floor premises. The case of the Appellants by way of defence is that the father of the Appellants was a tenant in respect of the suit premises from the year 1975 and he was paying rent at the rate of Rs.20/- per month. The Respondent had relied upon a writing to show that the possession of the father of the Appellant was a permissive possession.

3. Shri Godbole, the learned Counsel for the Appellants submitted that the Courts below have committed an error

in invoking section 73 of the Indian Evidence Act 1872 for coming to the conclusion that the writing at Exh.98 was signed by the father of the Appellant No.1. He submitted that the Respondent was confronted in the cross-examination with a rent receipt issued by him and it was admitted in the cross examination that the rent was tendered by Shri Pandurang Ukarande on behalf of the Appellants. He submitted that the receipt is in respect of the suit premises which shows that rent was paid by the said Pandurang on behalf of the deceased father of the Appellant No.1 and therefore, it is an admitted position that the Appellant No.1 is the tenant. He submitted that this important admission has not been considered by the learned Appellate Court.

4. I have considered the said submissions. The Appellants have not disputed that the Respondent is the owner of the suit premises. The Appellants tried to defend their possession by contending that the father of Appellant No.1 was inducted in the suit premises in the year 1975 as a tenant. It is not in dispute that no documentary evidence is produced on record to show that the father of the Appellant No.1 was tenant in respect of the suit premises. A case was made out by the Appellants that in the suit premises cloth business was being carried out under the name and style of M/s.Sidram Ankaram through its partners viz. father of Appellant No.1, one Shankarrao and Pandurang Ukarande and the said

firm was dissolved in the year 1994. From the Judgment of the Appellate Court it appears that a submission was made that southern half portion of the first floor was given back to the Respondent and the remaining portion of the upper floor and the ground floor premises remained with the Appellant. The Appellate Court has recorded a finding that even according to the case of the Appellant the firm M/s. Sidram Ankaram was dissolved in the year 1994. A copy of the deed of partnership was not placed on record and even the deed of dissolution is not placed on record. The Appellate Court noted that the Appellants did not examine Pandurang Ukarande. After consideration of the entire oral and documentary evidence on record, the Courts below have held that the Appellants have failed to prove that the father of the Appellant No.1 was a tenant in respect of the suit premises.

5. In so far as the admission in the cross-examination which is relied upon by the learned Counsel for the Appellant is concerned, it is to be noted that no specific submission appears to have been made before the Appellate Court on the basis of the receipt which was sought to be proved in the cross-examination. The learned Counsel for the Appellants submitted that if the entire paragraph 10 of the cross-examination is read, it is apparent that the questions were being asked in respect of the suit premises. It is to be noted here

that there is no specific suggestion made to the Respondent that the receipt dated 12th December 1992 shown to him pertains to the suit premises. Apart from the flat that no specific submission is made before the Appellate Court on the basis of the said receipt, it is to be noted that there is no other evidence brought on record to show that the father of the Appellant No.1 was inducted in the suit premises as a tenant. Therefore, even assuming that the writing at Exh.98 is not established by the Respondents, the Appellants have failed to prove that they are in possession of the suit premises as tenant.

6. There is no reason to interfere with the concurrent findings of facts recorded by the Courts below which are based on the oral and documentary evidence on record. There is no perversity in the findings and hence the Second Appeal is dismissed with no order as to costs.

7. At this stage, the learned Counsel for the Appellants submitted that ad-interim relief granted by this Court on 7th October, 2004, be continued for a period of three months. The ad-interim relief granted by this Court will continue to operate till 30th April 2005.

Judge.